THE MERIT SYSTEM AND THE COUNTY CIVIL SERVICE

By Robert W. Belcher,
Secretary, National Civil Service Reform League, New York City.

Although the application of the merit system in appointments to the public service has been made a part of the administrative laws of six states and over two hundred cities in the United States, its adoption for the services of counties has been slow and halting. Civil service laws are to-day in operation in seventeen counties in New York, four counties in New Jersey, one in Colorado, one in California and one in Illinois. A state-wide civil service bill is now before the legislature in Ohio, as the result of the adoption of an amendment to the Ohio constitution last September, placing the service of the state, its cities and counties, on the merit basis, and this bill applies to the county service. Its enforcement is to be under the jurisdiction of the state civil service commission. These cover, however, all the counties under civil service laws anywhere in the country. Even in states like Massachusetts, Illinois, Wisconsin and Colorado, where state-wide civil service laws are in operation, the services of the counties, with the exception of two counties only, are still filled on the basis of the spoils system.

The result has been that the management of county charitable institutions, the important and difficult work in county legal offices and the administration of county public works, all calling for trained expert services, are commonly conducted by political appointees, chosen because of their political beliefs and activities and but poorly qualified to do their work. County jails, workhouses and other correctional and charitable institutions are badly kept and mismanaged, and the wards of the community are ill treated or not treated at all. The clerical service in county offices is frequently inefficient, the business of the county clerk's and county register's offices is poorly conducted, and records are kept at the best in a haphazard, accidental fashion which is expensive alike to the county and to the individual citizen in his business affairs. Meanwhile the service of the county is the property of the political party which happens to be in power and supports a small army of political hangers-

on who form the nucleus of the political spoils machine. In the service of a great and important administrative division of the state, in other words, the evils of the spoils system are allowed to continue unabated.

It is difficult to find any good reason for this neglect of the sound principles of the merit system in the counties of the state. It has been due either to active political opposition against the abolition of spoils, or to the notion that the county civil service is relatively unimportant and not worth the trouble or expense incidental to a properly devised and effectively administered merit system. This notion, however, is a mistaken one.

The merit system is a businesslike method of appointments to public office designed, first, to prevent the public service from being used as the basis of a political machine and, second, to provide the necessary machinery for the choice, through examinations, which, so far as practicable, shall be competitive, of properly qualified persons to fill public office. It is a reform absolutely essential, if efficiency, economy and businesslike administration are to be expected in public work. Without it, unless our political habits of mind are to be radically changed, it is hopeless to expect that the wastefulness, inefficiency and scandal in national or local administration, the inevitable accompaniments of the spoils system, will be eradicated.

No change in the form of county government, badly as it may be needed, can be counted on alone to effect this reform. Unless the establishment of the merit system be made a matter of law, abuse of the power of appointment to pay political debts and purchase political support is sure sooner or later to develop. Concentration of responsibility in the hands of a small board, for example, even with provision for such a check as the recall, will fail, because it is not administrative detail in which the people are interested. As was stated in the article on civil service provisions in commission charters by Mr. Elliot H. Goodwin in the November, 1911, issue of THE ANNALS, "the belief that the people can or will hold administrative officers responsible for the manner in which they fill subordinate positions is a denial of actual experience to the contrary. Under any form of government the appointments to subordinate positions are matters of administrative detail of which the people are commonly ignorant and to which they cannot in the nature of things give careful attention. If, however, the principle that merit and fitness alone

shall rule in all appointments and promotions is embodied in the governing law of the community, any violation of the law or the spirit of that law raises an issue which is clear and concrete. This makes possible the holding of the offender responsible therefor at the polls."

If the desirability of removing the services of our counties from politics be granted, the only problem to be considered is that of the most efficient and at the same time most economical method of civil service administration. Certain principles of civil service administration must first be recognized if the enforcement of the civil service law is not to be set at naught. First among these principles is that the civil service commission must be removed from the control by the executive officers whom the civil service law is intended to check in the exercise of their power of appointment. Whatever may be the appointive power, the most effective checks against this control are provisions that the commissioners shall be appointed for overlapping terms of considerable length and shall not be removed except for reasons given in writing and after an opportunity to be heard publicly in their own defense (without, however, any right of appeal to the courts), and that the drafting of the rules to put the civil service law in effect shall not be subject to the veto of the appointing power. By providing for overlapping terms extending over the term of the appointing authority it will not be possible for any executive completely to reorganize the commission at the beginning of his term by making a clean sweep, and the public at the same time will be given the benefit of the services of commissioners who have had experience in the administration of the law. Provision for removal only after a hearing upon stated charges prevents the summary discharge of an efficient commissioner for political reasons. A civil service law cannot contain all of the details for its effective administration. It should contain the broad principles and should embody all provisions essential to its proper enforcement. Rules covering the details should be drafted by the experts appointed for that purpose, that is, the commission. Approval by the chief executive at once puts the enforcement of the law at the mercy of a hostile governor, mayor or county board.

In any properly devised system of civil service administration these principles must be observed. The specific problem in connection with the civil service of counties is solely the question of

whether the law shall be administered by a local board or by a commission having state-wide jurisdiction. Experience has shown that, even in the case of the municipal service, state control, as in Massachusetts and in New Jersey, or state supervision, as in New York, is by far the preferable system. In Massachusetts the enforcement of the civil service law is mandatory on all cities and its administration is conducted by the state civil service commission. In New Jersey the civil service law is mandatory only as to the state service, but becomes effective in the civil divisions of the state, including counties and villages as well as cities, after adoption by the people at a regular election. When so adopted it is administered not by a local commission but by the state commission. In New York the civil service law of the state is based on a constitutional provision. It applies to all municipalities, but is administered in cities by local commissions subject to the supervision of the state commission. Changes in the rules, including changes in the classification in municipal services, must first receive the approval of the state commission before becoming effective, and the work of municipal commissions throughout the state is subject to investigation in all its particulars by the state board. This system of state control has removed municipal services in Massachusetts entirely from the control of local authorities, and state supervision has proved an effective check against the overthrow of the merit system by hostile mayors in the cities of New York. It is of particular advantage for the smaller cities where the service is so small as to render a well-paid commission, capable through an efficient chief examiner of holding thoroughgoing examinations, out of the question.

The advantages of state supervision or state control for municipalities would be and have been fully as great for county services. Of the twenty-four counties throughout the country now under civil service laws, twenty-one are under the complete control and direction of state civil service commissions. These are the four counties in New Jersey and the seventeen counties in New York. The New Jersey law has been made to apply to the services of the four largest counties in the state, namely, Essex, Hudson, Mercer and Trenton, through adoption by the people at the polls. The extension to the counties in New York has been on a different principle and the history of this extension and its results are worth giving at some length.

The Constitution of New York State—Article V, section 9—reads in part as follows:

. . . Appointments and promotions in the civil service of the state and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive. . . . Laws shall be made to provide for the enforcement of this section.

The present civil service law placing the service of the state departments on the merit system, is mandatory, as already explained, for cities, but leaves to the civil service commission the power to extend its provisions in its discretion to the service of counties and villages. Its first application to county services in New York was made in 1900, when the state civil service commission took under its jurisdiction the counties in the state having a population of 100,000 or over, namely, Richmond, Kings, Queens and New York, comprising the Greater City, and Erie county in the western end of the state. This extension had been urged on the state commission for a long time by the friends of the merit system. In its report for the year 1899 the commission, after outlining its plans for this extension, explained the reasons that led thereto as follows:

. . . The necessity of classifying the service in the counties with a population of 100,000 is so great that it cannot be overlooked. The efficiency of the enforcement of civil service rules and regulations in the cities is greatly impaired in all cases where the county service, often largely centralized in the same buildings or in the same vicinity, is unclassified and left as a matter of patronage. Consistency also requires that county offices which in their nature are similar to existing city offices shall be classified in a similar manner. We doubt not but that the bringing of this service under civil service rules and regulations will produce great benefits to the service.

The extension was made by amendment to the civil service rules on June 16, 1900. In its classification of the services of these counties the commission held that subordinates who were paid solely from fees should not be put in the competitive class, since they were "for all practical purposes the servants of their superiors rather than of the county or of the state," and since the commission had no power effectively to enforce its rules and classification which it possessed in other cases, namely, that of preventing the payment of salary by refusing to approve the payroll of those illegally appointed. This materially cut down the number of places that would otherwise have been made competitive, but the change did bring under the competitive system a total of 977 places.

The new system was tried for five years, with such success that in 1905 the rules were extended to cover the services of Albany, Monroe, Onondaga and Westchester counties. Four years later another extension was made to the services of eight additional counties. In making this last extension the commission declared that "with this extension of classification the service in seventeen counties is now under the civil service rules and it is believed that all of the counties have been classified in which the service is not at present so small or so largely organized under the fee system as to make classification impracticable."

Besides the counties in which the entire service has been classified, the New York commission has, by its rules, provided that county superintendents of highways and county sealers of weights and measures in all other counties as well shall be in the competitive class. This opens the way to extending the competitive system to particular offices in all counties of the state where competition would prove beneficial, even though the entire services of all the counties be not classified.

From the beginning of this extension of the rules the commission has had to meet constant opposition to competitive classification from county officials. Requests for exemptions have commonly been based on the shop-worn plea of "confidential relations" between department heads and the subordinates involved. Many of these requests for exemption have been denied, but there are nevertheless a considerable number of positions which the commission has exempted from competitive examination and which should be so filled. The merit system in New York counties, furthermore, met with a serious setback in 1908 in a decision of the court of appeals in the case of Flaherty *vs.* Milliken reversing both the lower courts and holding that a large number of employees in the office of the sheriff in Kings county were his personal agents, since they had to do with the civil business of his office, and should, therefore, be exempt. The court in its opinion said: "The relation between a sheriff and his appointees . . . is not merely that the sheriff is liable for the default of his appointee, but that the appointee for such default is liable to the sheriff and to no one else." The positions involved in this case were those of assistant deputy sheriffs, jail keepers and matrons, and as a result of the decision a large number of places in the offices of the sheriffs are now exempt. Commenting on this case

in its report for the year 1908, the New York State commission gave an authoritative statement of the political uses to which these exempt places are put. It said:

> The practical operation of the rule of personal agency is, in large measure, to open the door to appointment for political purposes of persons in whom no real trust is reposed. These offices are in practice found to be a haven for political spoilsmen, demoralizing in its influence on the general operation of the merit system and prejudicial to the honest and efficient administration of the jails. The law should be amended to bring the employees of the sheriff into the civil service, stop the notorious use of these places as political spoils, and secure the transaction of this branch of the public business by competent persons, free from the obligation or temptation to respond to improper influences in the use of legal process and in the care of prisoners.

Within the last month, however, the New Jersey Court of Errors and Appeals in a case involving the classification of the warden in the Hudson county jail handed down a decision precisely the opposite of that in the New York case. The argument that the subordinates of the sheriff were his personal employees the New Jersey court held

> is unsound. . . . As soon as the sheriff selects and employs assistants they become the servants of that municipality for whom the sheriff is acting, as the agent, and they become amenable for their official misconduct, in the performance of the public duties devolved upon them in their respective positions, to the public. In concise terms they are minor public officials acting under the supervision of an official of a higher rank or grade.

In conclusion the court said:

> It must be borne in mind that the object of the legislature was to secure by means of the civil service law efficient public service in the state institutions and in the governmental departments of this state. . . . This efficient service to which the public is entitled cannot be well subserved by a change in the persons who are appointed and employed by the sheriff to take care of the jail every time a new sheriff is elected, since he can hold his office for no longer period than three years and is ineligible to a re-election to succeed himself. It is a self-demonstrative proposition that the warden of a jail during the three years of his incumbency of that office acquires by experience valuable knowledge and efficiency in their discharge. He is more valuable in the public service than one who has not had that experience. There is nothing in the civil service law which prevents the discharge of an employee who may be found guilty of incompetency or official misconduct upon charges made and after a hearing. The general design of the act was to put such positions beyond political control, partisanship and personal favoritism, in order to secure to the state and county the best public service.

The New York and New Jersey system of civil service administration for counties has proved itself highly satisfactory and beneficial. Denver county, Col., Cook county, Ill., and San Francisco county, Cal., are the only other counties subject to civil service laws. The system in Denver county, established a short time ago by charter amendment reorganizing the city and county government, is not yet under way. The service of San Francisco county has been under the merit system for only a few months. Several years ago provision was made in the charter of the city of San Francisco for appointments to the service of the county as well as of the city through competitive examinations conducted by the city civil service commission. This charter provision was declared unconstitutional, but in October, 1911, a constitutional amendment was adopted to meet this difficulty. In December, 1912, a charter amendment was accordingly approved by the people and the civil service provisions of the charter, improved in certain respects and administered by the city commission, were extended to the county service. The system has been in operation for too short a time to permit of any conclusion as to its effectiveness. Provision is made in the amended civil service section of the charter for the appointment of commissioners for overlapping terms, and a check is thus established against the complete control of the local commission by the county board, which has the power of appointment. There is, however, the danger that the policy of the commission will be affected by local political conditions.

In Cook county, Ill., part of the service at least has been under the merit system since 1895. The Cook county civil service law passed in that year applied only to positions under the ministerial jurisdiction of the county board, or about one-third of the 3,000 county employees. It was administered by a county civil service commission separate from both the state civil service commission and the civil service commission of the city of Chicago, which is practically indentical with Cook county. In 1911 the law was radically amended and improved, retaining, however, the local independent commission. Within the last few weeks the amended law was declared unconstitutional on a technicality in its passage through the legislature and the old law is now in force. Events of the last two or three years in Cook county are of value, however, as illustrating the danger of an independent local commission.

The democratic landslide of 1910 brought into office, among others, the Hon. Peter Bartzen as president of the Cook county board. Mr. Bartzen had been at one time highways commissioner in the city of Chicago under Mayor Harrison, and in that office had displayed many eccentricities and open hostility to the city civil service law. The democratic platform on which he was elected to the Cook county board in 1910 pledged the party candidates to civil service reform. This pledge, however, was apparently for advertising purposes only, and a secret pledge, which came to light after election, said to have been signed by all the Democratic candidates, pledged these candidates on their word of honor to place at the disposal of the Democratic County Committee all of the patronage of their respective offices. The county civil service commission was immediately reorganized and Mr. Bartzen at once began to make removals from the service. His first act was to discharge all probationers; others were forced to resign under threat, and still others were discharged for offenses alleged to have occurred several years before. Many positions were abolished and recreated under new titles, to which new incumbents were appointed, and the net result was that, in a short time, one-fifth of the 1,000 employees were removed from the service. The service, furthermore, was packed with political hacks, and many appointments were made without any reference or notice to the civil service commission and often in the face of existing eligible lists. When the president of the civil service commission, some weeks later, refused to certify to the payrolls of these illegal appointees he was discharged for incompetence and neglect of duty.

Meantime the Civil Service Reform Associations of Chicago and Illinois had secured the introduction in the legislature of a number of civil service bills applying to the state service, the service of the city of Chicago and to Cook county. The campaign for this new legislation began in the fall of 1910, when candidates for the legislature, and for Cook county offices were placed on record, through pledges, as for or against comprehensive civil service legislation. The people, by a majority of nearly 300,000 votes, advised the legislature that they favored the passage of this new legislation. The largest majority for the amendments was in Cook county, which was the only county affected by the changes in any of the laws. The legislature accordingly at its session in 1911 passed a bill amend-

ing in a sweeping fashion the Cook county law. This was the new county law referred to above which was recently declared unconstitutional.

In spite of the passage of this legislation and of the significant popular vote in favor of the merit system in 1910, Mr. Bartzen continued to jockey with the civil service and kept up his attempts at intimidation of the civil service commission. In the fall of 1912 he was a candidate to succeed himself. The result of that election was peculiarly significant. His opponent was Mr. Alexander A. McCormick, a member of the Chicago Civil Service Reform Association. The main issue was Mr. Bartzen's notorious record as a spoilsman as contrasted with Mr. McCormick's record as a civil service reformer. The result was a crushing defeat for Mr. Bartzen, who was the only democrat on the ticket to fail of election. When Mr. McCormick became president of the board, the civil service commission was reorganized and took up the work of classifying the service on the basis of duties, standardization of employment, etc., which the Bartzen board had failed to touch. Mr. McCormick, however, has recently had difficulty with the commission, resulting only a few weeks ago in the removal of two of the commissioners. The removed commissioners are contesting their removal in the courts and in the meantime insist on regarding themselves as the only duly authorized commission.

Actual experience with the system of appointments on the basis of merit in the county services has fully demonstrated the entire practicability of placing the service of counties under the competitive system. With the improvement in methods of examinations which has been such a marked feature of civil service development in the last few years, it is now possible to fill even the higher positions in county offices through civil service examinations. This is particularly true of legal positions or positions which involve legal matters. It has been peculiarly difficult to bring the public to believe that a civil service examination could be devised which would properly and adequately test qualifications for such positions as that of a law clerk or legal officer in a public department. Because, too, of some of the peculiar features of county government, particularly in the prosecuting attorney's office and in the office of sheriff, the argument that the head of the department should have complete power of appointment because his employees were in confidential relations with

him has been stretched unduly in county services. It has been repeatedly demonstrated, however, that legal positions, even of a high grade, can be filled through a practical competitive examination. This is done in the office of the corporation counsel in New York City, where assistant corporation counsel, receiving $3,000 or less, and all the junior assistant corporation counsel, are in the competitive class, and in the office of the attorney-general of the State of New York, where all but one or two of his deputies are now competitive employees. The public is coming to appreciate the fact that, for a great many of the exempt positions in the state service, the department head actually exercises less personal discretion in the matter of appointment than he would if his employees were chosen from eligible lists established by the civil service commission. His will and wish are altogether too often circumscribed and hampered by the will and the wish and the orders of the political boss or leader to whom he owes his office. Demonstration in practice of not only the propriety, but the necessity of taking county employments out of politics and placing them on the merit system should remove all doubt as to the proper method of employment for the conduct of county business. If the system can be administered by a central civil service board, as it is in New York and in New Jersey and soon will be in Ohio, the problem of providing the machinery of this system of appointment for counties is easily and effectively solved.